IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

OP.No. 207 of 2002(Y)

PETITIONER:

ORIENTAL INSURANCE CO.LTD.,REPRESENTED BY ITS DEPUTY MANAGER,REGIONAL OFFICE,ERNAKULAM.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS:
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1. **SURESH KUMAR,PUTHENTHARAYIL, PERUNGALAMURI,KAYAMKULAM.**
2. **MOHANAN PILLAI,KOTTINATTU HOUSE, CHERAVALLY,KAYAMKULAM.**
3. **K.S.RAMAKRISHNAN,ANITHABHAVAN, KARACKAMURI.,ERNAKULAM.**
4. **THE ADDITIONAL MOTOR ACCIDENTS CLAIMS MAVELIKKARA.**

BY ADV. SRI.K.HARILAL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.207/2002

ORDER ON CMP. NO.267/2002 IN OP.No.207/2002

DISMISSED

11.07.2007 **SD/- T.R.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AWARD DT. 26.5.01 IN OP(MV) 704/95 ON THE FILES OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, MAVELIKKARA.

/TRUE COPY/

tss

T.R. Ramachandran Nair, J.

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O.P.NO.207 of 2002-Y

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Dated this the 11th day of July, 2007

JUDGMENT

This original petition is filed by the insurance company, aggrieved by Ext.P1 award of the Motor Accidents Claims Tribunal, Mavelikkara in O.P. (MV) No.704/1995. According to the petitioner, the company is not liable because of the substitution of the vehicle in the police records after the accident occurred.

2. Heard Shri Anchal C. Vijayan, learned counsel for the petitioner and also the learned counsel for the respondents Shri K. Harilal. Learned counsel for the petitioner submitted that this is a case where the owner and driver of the vehicle KL-7D/5369 remained ex-parte. The contention of the insurer was that vehicle No.5369 was not involved in the accident and actually vehicle No.KL-4/6138 is the offending vehicle. It was also pointed out that initially the case was registered against the driver of the vehicle KL-4/6138 and the police subsequently substituted the vehicle KL-7D/5369 instead of vehicle KL-4/6138 and the vehicle KL-4/6138 had no insurance coverage with the petitioner.

3. Ext.P1 is the award whereby the Tribunal, after considering the

contentions of the parties, held that there was no evidence to show that the vehicle was substituted. The police had registered a crime and Ext.A8 is the charge sheet. Ext.A8 will show that the vehicle KL-7D/5369 was the offending vehicle which was involved in the accident. There is no contra evidence on this aspect on the part of the insurance company. The Tribunal has entered the finding after assessing the evidence, both and oral and documentary. P.W.1 had given sufficient explanation for mentioning in the F.I.R., the number of the vehicle wrongly. Being a finding of fact, this court while exercising the jurisdiction under Article 226 of the Constitution of India, normally cannot interfere with the same also.

The amount awarded is only Rs.6,500/- with 9% interest. Therefore, I do not find any reason to interfere with the award. The original petition fails and it is dismissed confirming the award.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.207 of 2002-Y

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JUDGMENT

11th day of July, 2007